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IN THE
COURT OF APPEALS OF INDIANA

KATHRYN SWINSCOE,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 28A01-0604-JV-152
	)	
GREENE COUNTY DEPARTMENT OF CHILD SERVICES,	)	
	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable David K. Johnson, Judge
Cause No. 28C01-0602-JT-2, 28C01-0602-JT-3, & 28C01-0602-JT-4

September 21, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The Greene County Division of Child Services ("the DCS") filed a petition in Greene Circuit Court to terminate Kathryn Swinscoe's ("Swinscoe") parental rights to three of her four children. The petition was granted and Swinscoe appeals, arguing that the evidence was insufficient to support the termination of her parental rights. Concluding that the evidence was sufficient, we affirm.

Facts and Procedural History

Swinscoe is the mother of T.A., born November 29, 1995, J.A., born May 25, 1997, and K.A., born August 19, 1999. Swinscoe's eldest daughter, A.A., is not at issue in this petition. In December 1998, Swinscoe was investigated by the DCS for the first time regarding an incident where she left two of her children, T.A. and J.A., in a car with the motor running for a period of twenty minutes to a half an hour.

Seven months later, in July 1999, a police officer came to Swinscoe's home to tell her that two of her children, T.A. at age three and J.A. at age two, had been found alone and lost a block away from the house. The children had been away from the house for twenty to twenty-five minutes, yet Swinscoe was unaware that they were ever missing. After Swinscoe refused an Informal Adjustment, the DCS filed the first Child in Need of Services ("CHINS") petition.

On January 29, 2003, while the CHINS proceeding was pending, Swinscoe was arrested for possession of methamphetamine while in possession of a firearm, neglect of a dependent, maintaining a common nuisance, reckless possession of paraphernalia, possession of marijuana under thirty grams, carrying a handgun without a license, and possession of a Schedule IV controlled substance. Child Protective Services took all four

of her children into custody and placed them into foster care. The agency discovered that all of the children were very ill: T.A. had a fungal infection in his groin; K.A. had a urinary tract infection; A.A. had a vaginal infection; and all four children had fevers, sore throats, runny noses and coughs.

When Swinscoe was released on bond in February 2003, she was referred to the Debra Corn Agency to receive counseling services for her drug and alcohol problems, parenting classes, homemaker services, and supervised visitations with her children, who were still in foster care. Swinscoe missed five of her appointments with the agency in February and March of 2003. She then refused to participate in any drug or alcohol treatment, insisting that she did not have an addiction problem. She also claimed that it was difficult for her to participate in the agency's programs, as she did not have a job, a permanent residence or any transportation.

Swinscoe's supervised visitations with her children were terminated after she refused to take a drug screen when she came to meet her children smelling of ammonia and appearing high. At the fact-finding hearing on June 23, 2003, her children were found to be CHINS. While the CHINS proceeding was still pending, Swinscoe failed a drug screening test, testing positive for amphetamines, marijuana and opiates in July 2003. The CHINS petition was dismissed shortly thereafter when Swinscoe's parents filed for guardianship of the children. However, within two weeks of the dismissal the children's grandparents had given them back to Swinscoe without the oversight of any court proceeding.

Swinscoe was arrested again on March 3, 2004, for possession of methamphetamine, possession of marijuana, possession of drug paraphernalia, and resisting law enforcement. On December 9, 2004, she was arrested yet again for possession of methamphetamine, possession of controlled substances and possession of marijuana. She pleaded guilty to these charges. Once more her children were placed in foster care where they have remained to this day. The DCS filed its second CHINS petition in December 2004.

Swinscoe posted bond and was released on April 1, 2005. The DCS offered her services at this time to deal with her drug addiction so that her children could be returned to her. However, she was unable to participate in these programs as she was arrested again on May 19, 2005, for possession of methamphetamine, possession of marijuana, and conspiracy to manufacture. On September 1, 2005, at a sentencing hearing regarding the May 19th charges, Swinscoe was sentenced to five years with the earliest possible release date of July 2007.

On February 13, 2006, the DCS filed petitions for involuntary termination of the parent-child relationship of T.A., J.A., and K.A. The trial court held a fact-finding hearing on February 14, 2006. Then on March 7, 2006, the trial court entered an order granting the petitions and terminating Swinscoe's parental rights to her three children T.A., J.A., and K.A. Swinscoe now appeals. Additional facts will be provided as necessary.

Standard of Review

When reviewing termination proceedings on appeal, we neither reweigh the evidence, nor judge the credibility of witnesses. In re M.M., 733 N.E.2d 6, 11, (Ind. Ct. App. 2000). Where, as here, the trial court has issued a general judgment rather than specific findings of fact, we will affirm the general judgment on any legal theory supported by the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 198 (Ind. Ct. App. 2003). We consider only the evidence that supports the judgment together with all reasonable inferences to be drawn therefrom. Id. On appeal, we will reverse a termination of parental rights only upon a showing of clear error, which leaves us with a definite and firm conviction that a mistake has been made. Id. at 199 (citing In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997)).

Discussion and Decision

The involuntary termination of parental rights is the most extreme civil sanction a court can impose; therefore, termination is a last resort, available only when all other reasonable efforts have failed. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001). "The purpose of terminating parental rights is not to punish parents but to protect their children." In re M.M., 733 N.E.2d at 12 (citing In re A.N.J., 690 N.E.2d at 720). Parents have a constitutionally protected interest in the right to establish homes and raise their children; however, those rights may be terminated when parents are unwilling or unable to meet their parental responsibilities. In re T.F., 743 N.E.2d at 773. Parents' rights are subordinate to the interest of protecting the welfare of the child in determining an appropriate disposition of a petition to terminate parental rights. Id.

Termination of a parent-child relationship is proper where the child's emotional and physical developments are threatened. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). The trial court need not wait until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Id. A parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d at 13.

To effect the involuntary termination of a parent-child relationship, the DCS must establish that:

> (A) one (1) of the following exists:
>
> (i) the child has been removed from the parent for at least (6) months under a dispositional decree;
>
> (ii) a court has entered a finding under I.C. 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
>
> (iii) after July 1, 1999, the child has been removed from the parent and has been under supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) There is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interest of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child

Ind. Code § 31-35-2-4(b)(2) (1998). The DCS must establish these elements by clear and convincing evidence. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

We first address Swinscoe's argument that the evidence was insufficient to establish that the conditions resulting in the children's removal will not be remedied. To determine whether there is a reasonable probability that the conditions which resulted in the removal of a child will not be remedied, the trial court should judge a parent's fitness to care for the child at the time of the termination hearing, taking into consideration evidence of changed conditions. Id. at 209. Due to the permanent effect of termination, the trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. Id. In this regard, trial courts have properly considered evidence of a parent's prior drug and alcohol abuse, history of neglect, failure to provide support, lack of adequate housing, and unemployment. Evans v. St. Joseph County Office of Family & Children, 774 N.E.2d 896, 899 (Ind. Ct. App. 2002).

To support her argument, Swinscoe maintains that she has made significant changes in the conditions that led to the removal of her three children from her care. She points to her participation in homemaker services, parenting classes and counseling, as well as her future plans to attend Indiana State University. Br. of Appellant at 8-9.

Carol Phelps ("Phelps") was the DCS Family Case Manager assigned to the CHINS and termination proceeding. Phelps testified that Swinscoe's behavior is cyclical. On the one hand, Swinscoe states that she wants to have her children back in her home and has even contacted rehabilitation centers for treatment, but then she has later on refused to participate in programs that would allow her visitations with the children. Tr. pp. 146-47. A trial court "can reasonably consider the services offered by [the DCS] to

the parent and the parent's response to those services." McBride, 798 N.E.2d at 199. Swinscoe's participation in the DCS's programs was, at best, sporadic and ultimately terminated because of her refusal to participate as well as her repeated incarcerations. Phelps further stated that she does not predict Swinscoe's behavior will change in the future or that Swinscoe will be able to care for her children within a reasonable period of time. Tr. p. 148.

Essentially, Swinscoe asks us to reweigh the evidence presented, which we may not do. Bearing in mind the standard of appellate review, we cannot conclude that the trial court's findings are clearly erroneous. Given Swinscoe's unfortunate recurring behavior, the DCS presented sufficient evidence that at the time of the fact-finding hearing there was no reasonable probability that the circumstances that led to the children's removal from Swinscoe's care would be remedied.

Swinscoe also argues that the DCS presented insufficient evidence to establish that continuation of her parental relationship poses a threat to the children's well-being. Under Indiana Code section 31-35-2-4(b)(2), the DCS was required to demonstrate by clear and convincing evidence that either: (1) the conditions that resulted in the child's removal will not be remedied, *or* (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. As set forth above, sufficient evidence supported the trial court's finding that the conditions resulting in the children's removal would not be remedied. Consequently, we need not address Swinscoe's argument regarding the finding that continuation of her parental relationship poses a threat to her children's well-being. See, e.g., Peterson v. Marion County Office of Family & Children,

804 N.E.2d 258, 272 n.2 (Ind. Ct. App. 2004), trans. denied; In re T.F., 743 N.E.2d at 774.

Next, Swinscoe argues that the DCS failed to present clear and convincing evidence that termination of the parent-child relationship was in the best interests of her children. "In determining what is in the best interests of the child, the trial court is 'required to look beyond the factors identified by the office of family and children, and to look to the totality of the evidence.'" Weldishofer v. Dearborn County Div. of Family & Children, 779 N.E.2d 954, 962 (Ind. Ct. App. 2002), trans. denied (quoting In re T.F., 743 N.E.2d at 776). In doing so, the trial court must subordinate the interests of the parents to those of the children. Id. The trial court need not wait until the children are irreversibly influenced such that their physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. Id. "A parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that continuation of the parent-child relationship is contrary to the child's best interests." In re D.V.H., 604 N.E.2d 634, 638 (Ind. Ct. App. 1992), trans. denied.

Here, the trial court was presented with evidence of Swinscoe's failure to complete various services offered by the DCS due to both Swinscoe's refusal to participate and her repeated incarcerations. Tr. pp. 28-29; 32; 37-41; 49-51; 146-48. In addition, Swinscoe admitted in open court that she was unable to care for her children as she needed to first focus on her own recovery. Tr. pp. 64-65. Swinscoe also acknowledged that she could give no timeline as to when she would be released from

prison and when she would be capable of caring for her children in the future. Tr. pp. 56-64. Viewed as a whole, this is clear and convincing evidence that termination of Swinscoe's parental rights is in the children's best interests. We therefore conclude that the evidence is sufficient to support the trial court's termination of Swinscoe's parental rights.

Conclusion

The evidence is sufficient to support the termination of the parent-child relationship. We affirm.

KIRSCH, C. J., and SHARPNACK, J., concur.